SEARCH AND SEIZURE: Third-party consent; A person with common authority, or who reasonably appears to have authority, over the area to be searched may validly consent to a search……..Revised 12/2009

Consent searches are an exception to the general warrant requirement. That is, if a search is conducted by consent, no warrant is required. *See generally State v. Acinelli*, 191 Ariz. 66, 70, 952 P.2d 304, 308 (App. 1997).

In third-party consent cases, any person with common authority over an area can consent to a search. The Arizona Supreme Court has explained the test for determining if there is "common authority" over the area to be searched:

> For common authority to exist, more than a mere property interest of the third party must be shown. The test for determining common authority or other sufficient relationship focuses on apparent authority rather than actual authority. Thus, if it reasonably appeared that a third party had common authority over the premises, then the consent to search would be valid.

State v. Castenada, 150 Ariz. 382, 389, 724 P.2d 1, 8 (1986) [citations omitted]. Stated another way, common authority exists where there is "mutual use of the property by persons generally having joint access or control for most purposes, so that it is reasonable to recognize that any of the co-inhabitants has the right to permit the inspection in his own right and that the others have assumed the risk that one of their number might permit the common area to be searched." *United States v. Matlock*, 415 U.S. 164, 171 n. 7 (1974), *quoted in State v. Flores*, 195 Ariz. 199, 203, ¶ 11, 986 P.2d 232, 236 (App. 1999). Thus, if two or more persons share common authority over an area, any of them may validly consent to a search of that area.

It is important to remember that under the doctrine of "common authority," a person can grant valid consent to search even though that person does not *actually* have common authority over the area to be searched. Instead, the police can properly

rely on the person's *apparent* authority to give consent. *See State v. Flores*, 195 Ariz. 199, 986 P.2d 232 (App. 1999). The rationale behind this rule is that when there is some objective indication that a person has common control over the area to be searched and the person gives consent, the police can reasonably rely on that *apparent* authority and begin their search – they do not need to determine independently that the person giving consent *actually* has such authority. *See Stoner v. California,* 376 U.S. 483, 84 S.Ct. 889 (1964). To give a hypothetical example: Suppose police know that a suspect lives at a particular address. When police go to that address, a woman unlocks and opens the door to the police. When they ask her about the suspect, she says that she is the suspect's mother and this is her house. She gives the police consent to search the suspect's room and signs a consent to search form. She then shows them to the suspect's room and opens the room's door for them. The woman appears to be the right age to be the suspect's mother, she has the keys to the house, and she knows where the suspect's room is. Because there are objective indications that the woman has common control over the suspect's room, and therefore has authority to consent to the search, the police can reasonably rely on her *apparent* authority to consent. They do not have to inspect the suspect's birth certificate or the ownership of the house before conducting their search. Even if it later turns out that the woman was the mother's guest and had no *actual* authority to consent, the search will be upheld because the police reasonably relied on her *apparent* authority to consent.

In *State v. Stanley*, 167 Ariz. 519, 809 P.2d 944 (1991), the defendant's sisters-in-law consented to a police search of the defendant's garage and obtained a key to the garage from the defendant's mother. The defendant argued that the sisters-in-law had

"no real or apparent authority" to grant consent and that his mother had no actual "common authority over the property." *Id*. at 526, 809 P.2d at 951 (1991).The Court found no error, stating that considering that the sisters-in-law had obtained the keys from the defendant's mother, who knew that the police would use them to search the garage, "common authority may properly be inferred, exercised and delegated to the police as in this case." *Id*.

The "common authority" doctrine can apply to areas in a home to which all the occupants have access, even though that area may be separately securable from the rest of the residence. For example, in *State v. Jones*, 185 Ariz. 471, 917 P.2d 200 (1996), the defendant killed two people in Arizona and attempted to kill a third. After the crimes, he fled to Las Vegas, where he paid rent to a couple to sleep on their couch. The defendant left his belongings, including the bloodstained clothes he had worn the night of his crimes, at their apartment in a closet also used by the couple. When the Las Vegas couple began moving to a new apartment, the defendant spent a night at their new apartment, but he left most of his belongings at the original apartment. The couple then saw the defendant's name in the newspaper as a murder suspect and called police, who arrested the defendant at the new apartment. The couple told police that the defendant had left his belongings at the original apartment, said that they did not want to keep his things, and invited the police in. Without a warrant, the police took the defendant's belongings, including the bloodstained clothes, from the original apartment.

The defendant in *Jones* moved to suppress the evidence, arguing that he had a reasonable expectation of privacy in his belongings at the original apartment and that the couple lacked authority to consent to the seizure of his belongings. The Court held

that, while he did have a reasonable expectation of privacy in his property, the search and seizure was a valid consensual search. *State v. Jones*, 185 Ariz. 471, 481, 917 P.2d 200, 210 (1996). **"**The uncontroverted evidence at trial was that the [couple] had joint access to and control over the closet where the defendant's things were stored and that he had no right to exclude them from this area.**"** *Id.* When he left his belongings at the original apartment, the defendant also "assumed the risk" that the couple would allow the police to search the common area. *Id*. Therefore, because the couple and the defendant had common authority over the area where he left his belongings, the couple could validly consent to the search. *Id.*

The "common authority" doctrine also allows parents to give consent to search their children's quarters on the parents' property. In *State v. Maximo*, 170 Ariz. 94, 821 P.2d 1379 (App. 1991), the defendant lived with his parents rent-free. The parents lived in the main house on the property and the defendant lived in a small, physically separate apartment on the property. Both the defendant and his parents had keys to the apartment. The parents consented to a search of the apartment, where police found the victim's purse. The defendant argued that the purse should have been suppressed because his parents lacked authority to consent to the search. The Court found that the parents could properly give consent, stating:

> The overwhelming majority of cases uphold third-party consent by parents to the quarters of children living at home. W. LaFave, *Search and Seizure* § 8.4(b) at 280 (2d ed. 1987). There is a risk which the child must assume, regardless of his subjective intent, that his parents will later elect to exercise full authority over their own property, even if the child customarily locks the door to his asserted private space. *Id*. at 284.

Id. at 98, 821 P.2d at 1383.

The "common authority" doctrine also applies to business premises. In *State v. Lucero*, 143 Ariz. 108, 692 P.2d 287 (1984), the Luceros reported that a burglary had occurred during a weekend trip. They filed a large insurance claim but were not cooperative with police. Officers therefore began investigating the case for possible insurance fraud. The Luceros told officers that they had met with Thomas Brown before they left for the weekend. The officers checked and found that Thomas Brown had rented a storage locker before that weekend and contacted Brown. Brown told them that at the couple's request, he had rented a storage locker in his own name and stored their property there. Brown gave one set of keys to the Luceros and kept a second set for himself without their knowledge. Brown gave one of the officers the keys to the locker he had rented, with a note authorizing the officer to enter and search it. When the officer entered the locker, he found the items that the Luceros had reported stolen. The Luceros were charged with fraudulent schemes. The trial court granted their motion to suppress the evidence, and the Court of Appeals affirmed the suppression order. However, the Arizona Supreme Court reversed. The Court reasoned that Brown, as the person whose name appeared on the rental agreement, was responsible for rent payment and had keys to the locker. The search was therefore proper because Brown apparently had common authority over the locker. Further, by having Brown rent the locker in his own name, the Luceros effectively assumed the risk that Brown would grant others permission to search. *State v. Lucero*, 143 Ariz. 108, 109-110, 692 P.2d 287, 288-89 (1984). *See also State v. Stanley*, 167 Ariz. 519, 526, 809 P.2d 944, 951 (1991).

The "common authority" doctrine can also be applied to vehicles. In *State v. Flores*, 195 Ariz. 199, 986 P.2d 232 (App. 1999), an officer stopped a vehicle that was weaving into the emergency lane. Flores owned the truck; Perez was driving and Flores was the passenger. The officer issued a warning and told Perez he was free to leave; however, as Perez started to walk away, the officer asked him if there were any guns or drugs in the truck. Perez said no. The officer then asked if Perez would mind if the officer searched the car. Perez again said no and signed a consent to search form. Officers eventually found drugs hidden in an air compressor in the back of the truck, and both men's fingerprints were on the drugs. Both men were charged with drug and paraphernalia offenses. After the trial court denied their motions to suppress, both men were convicted and their appeals were consolidated. On appeal, Flores, the owner, argued that Perez, the driver, did not have the power to consent to search the truck because Flores, the owner, was also present. The Court of Appeals found no error, stating that, because Perez was driving the truck, Perez had "immediate possession and control" of the truck and "unfettered access to the open cargo area in which the compressor was located." The Court of Appeals found that Perez "accordingly had actual as well as apparent authority to consent to the search, an authority Flores virtually conceded by his failure to object and a risk Flores had assumed in allowing Perez to share possession and access." *State v. Flores*, 195 Ariz. 199, 204, ¶ 17, 986 P.2d 232, 237 (App. 1999).